



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,135	08/31/2001	Jay Rossiter	50277-1786	4251

29989 7590 03/05/2003
HICKMAN PALERMO TRUONG & BECKER, LLP
1600 WILLOW STREET
SAN JOSE, CA 95125

EXAMINER

ALAM, HOSAIN T

ART UNIT PAPER NUMBER

2172

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PRE

Office Action Summary	Application No.	Applicant(s)	
	09/945,135	ROSSITER ET AL.	
	Examiner	Art Unit	
	Hosain T Alam	2172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the amendment filed in Paper No. 11. Claims 1-7 have been amended. Claim 7 is a new claim.

Claim Objections

Claim 7 is objected to under 37 CFR 1.75(c) as being in improper form because it appears to be directed to a computer readable medium, however, the claims it depends on are directed to methods. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 depends on claims 1, 2, 3, 4, 5, or 6. Claims 1-6 are directed to a method while claim 7 to a computer program product. Claims 1-2, 4-6 are different from each other. It is therefore unclear as to what is meant by "the steps" as recited in line 4 of claim 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S.

Patent No. 5,606,693 issued to Nilsen et al. ("Nilsen")

With respect to claim 1, Nilsen teaches , a method for managing a system that includes a plurality of devices, wherein said configuration information dictates a manner of operation for one or more of said plurality of devices within network (Fig. 1, 120, 12, 124), arranged in a network as claimed comprising the steps of gathering and storing in a centralized repository metadata (Fig. 1, 132, 134; col. 3, lines 36-38, and 60-65) that reflects configuration information about the system and each of the devices; modifying metadata within the centralized repository to initiate configuration changes in the network (col. 4, lines 21-24; "add or delete" is equated with the claimed modifying step; col. 3, lines 60-64; the controller maintains the record of the type of request, load on each of the servers; col. 4, lines 21-24 – the addition and deletion of data based on the volume of data is considered equivalent to "configuration changes" as claimed); and propagating said changes from the repository to the devices in the network to cause said configuration changes (col. 4, lines 2-4).

With respect to claim 3, which is dependent on claim 1, Nilsen teaches a centralized metadata repository resides outside the system (elements 132 and 134 are located at physically distant places and elements 132 and 134 are shown apart from each other).

Claim 2 is rejected for the same reasons as applied to claim 1 above. As to the recovering the repository from a backup, Nilsen shows configuration 134 as a backup for configuration 132.

Claim 4 is rejected for the same reasons as applied to claims 1 and 2 above because claims 1 and 2, in combination, include all the elements of claim 4. As stated in column 3, lines 37-38, in case of failure, Nilsen utilizes a backup/redundant configuration 134 to restore configuration 132.

Claim 5 is essentially the same as claim 1 or claim 4, except that it recites a second repository. Nilsen utilizes a redundant alternate configuration 134 to restore configuration 132. See col. 3, lines 34-36.

Claim 6 is essentially the same as claim 1 or claim 4 or claim 5, except that it recites a step of managing configuration of at least two layers of a system.

As to the two layers of a system as claimed, Nilsen teaches historical analysis of data (col. 3, lines 13-15) and the load on each of the database servers (col. 3, lines 62).

Art Unit: 2172

Historical analysis of data is analytical processing, usually carried out by an OLAP-type component. Determination of load on servers is analysis of input/ output operations, usually carried out by a transaction processing component. Therefore Nilsen teaches at least two layers.

See also MPEP 2144.01 for Implicit Disclosure: "[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Claim 7 is essentially the same as claims 1 or 4 or 5 except that it sets forth the claimed invention as a computer program product rather than a method and rejected for the same reasons as applied above. It is noted that software comprising instructions can be loaded in a general purpose computer to turn it into a specific purpose computer, which then performs the specific steps recited in claims 1-6.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 2172

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hosain T Alam whose telephone number is (703) 308-6662. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Y Vu can be reached on (703) 305-4393. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-6606 for regular communications and (703) 308-6606 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305 3800.

The following contact numbers may also be used:

TC 2100 After Finals number is 703-746-7238

TC 2100 Official Fax number is 703-746-7239

TC 2100 Customer Service Center is 703-746-7240

Application/Control Number: 09/945,135
Art Unit: 2172

Page 7



Hosain T Alam
Primary Examiner
Art Unit 2172

February 28, 2003